

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID NEKULA,

Plaintiff,

v.

MICHAEL J. BANOVSKY, in his
individual capacity, **MAURICIO**
JIMENEZ, in his official capacity, also
known as **JIMENEZ, GREG DREWS**, in
his individual capacity, **ANTHONY J.**
BARRAVECHIO, in his individual
capacity, **JOHN DOE INC., UNITED**
STATES OF AMERICA,

Defendants.

2:10cv1180

Electronic Filing

Magistrate Judge Lisa Pupo Lenihan

Judge David Stewart Cercone

MEMORANDUM ORDER

AND NOW, this 11th day of January, 2012, after de novo review of the record and upon due consideration of the magistrate judge's report and recommendation filed on December 5, 2012, and the parties' objections thereto, IT IS ORDERED that [19] defendants' partial motion to dismiss or for summary judgment be, and the same hereby is , granted in part and denied in part. The tort claims against the United States and the claims against the John Doe corporate defendant are dismissed. The motion is denied in all other aspects. The magistrate judge's report and recommendation of December 5, 2011, as augmented herein is adopted as the opinion of the court; and

IT FURTHER IS ORDERED that plaintiff's requests for additional time to effectuate service and to employ alternative means of service as set forth in his objections are referred to the magistrate judge for further consideration and/or proceedings as deemed appropriate by the magistrate judge.

Defendants' objections are unavailing. As aptly explained in the report and recommendation, under the applicable pleading standards the allegations of the complaint as construed in accordance with plaintiff's *pro se* status set forth a plausible showing of entitlement to relief on the personal participation claims against Drews and Jimenez. Neither Twombly nor Iqbal impose a burden of proof on plaintiff at this juncture. Showings of proof such as those demanded in defendants' objections, see e.g. Defendants' Objections (Doc. No. 28) at 6, 8, appropriately are reviewed after the parties have had an opportunity to complete discovery.

s/ David Stewart Cercone
David Stewart Cercone
United States District Judge

cc: David Nekula
12945 West Rudasill Road
Tucson, AZ 85743

(Via First Class Mail)

Magistrate Judge Lisa Pupo Lenihan
Jennifer R. Andrade, Esquire

(Via CM/ECF Electronic Mail)